

AMENDED IN SENATE AUGUST 6, 2002  
AMENDED IN ASSEMBLY MARCH 27, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 138**

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**Introduced by Assembly Member Nation**

January 24, 2001

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An act to amend Sections 10126, 10780.5, and 20103.8 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 138, as amended, Nation. Bidding procedures: alternative bids.

Existing law affecting state contracts prescribes procedures for determining the lowest bidder if additions or deletions from the base bid are considered, authorizes local agencies and the Trustees of the California State University to include alternatives that may be added to, or deleted from, the final bid award for a project, and specifies how those alternatives shall be considered in determining who is the lowest responsible bidder. Existing law requires the lowest bid to be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

This bill would also require the determination of the lowest bid to be made in a manner that prevents any information that would identify any of the proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 10126 of the Public Contract Code is  
2     amended to read:  
3     10126. Notwithstanding the provisions of Section 10125, the  
4     estimate of cost may be approved by the director, which includes  
5     alternates contemplating additions to, or deletions from, the base  
6     bid, provided that all of the following requirements are met:  
7     (a) Estimates are made for each contingency and, in the  
8     aggregate, the alternates do not exceed 10 percent of the estimated  
9     cost for the project.  
10    (b) The available funds are at least sufficient to cover the filed  
11    estimate for the base project.  
12    (c) Whenever additive or deductive items are included in a bid,  
13    the bid solicitation shall specify which one of the following  
14    methods will be used to determine the lowest bid. In the absence  
15    of such a specification, only the method provided by paragraph (1)  
16    will be used:  
17    (1) The lowest bid shall be the lowest bid price on the base  
18    contract without consideration of the prices on the additive or  
19    deductive items.  
20    (2) The lowest bid shall be the lowest total of the bid prices on  
21    the base contract and those additive or deductive items that were  
22    specifically identified in the bid solicitation as being used for the  
23    purpose of determining the lowest bid price.  
24    (3) The lowest bid shall be the lowest total of the bid prices on  
25    the base contract and those additive or deductive items *that, when*  
26    *taken in order from a specifically identified list of those items,*  
27    ~~depending upon available funds as identified in the solicitation,~~  
28    *and added to, or subtracted from, the base contract, are less than,*  
29    *or equal to, a funding amount publicly disclosed by the department*  
30    *before the first bid is opened.*  
31    (4) The lowest bid shall be determined in a manner that  
32    prevents any information that would identify any of the bidders or  
33    proposed subcontractors or suppliers from being revealed to the  
34    public entity before the ranking of all bidders from lowest to  
35    highest has been determined.

1 (d) The contract is awarded to the lowest bidder, as determined  
2 by the method prescribed in subdivision (c).

3 (e) A responsible bidder who submitted the lowest bid as  
4 determined by this section shall be awarded the contract, if it is  
5 awarded. This section does not preclude the department from  
6 adding to or deducting from the contract any of the additive or  
7 deductive items after the lowest responsible bidder has been  
8 determined.

9 (f) *Nothing in this section shall preclude the prequalification of*  
10 *subcontractors.*

11 SEC. 2. Section 10780.5 of the Public Contract Code is  
12 amended to read:

13 10780.5. The trustees may require a bid for a public works  
14 contract to include prices for items that may be added to, or  
15 deducted from, the scope of work in the contract for which the bid  
16 is being submitted. Whenever additive or deductive items are  
17 included in a bid, the bid solicitation shall specify which one of the  
18 following methods will be used to determine the lowest bid. In the  
19 absence of such a specification, only the method provided by  
20 subdivision (a) will be used:

21 (a) The lowest bid shall be the lowest bid price on the base  
22 contract without consideration of the prices on the additive or  
23 deductive items.

24 (b) The lowest bid shall be the lowest total of the bid prices on  
25 the base contract and those additive or deductive items that were  
26 specifically identified in the bid solicitation as being used for the  
27 purpose of determining the lowest bid price.

28 (c) The lowest bid shall be the lowest total of the bid prices on  
29 the base contract and those additive or deductive items *that, when*  
30 *taken in order from a specifically identified list of those items;*  
31 ~~*depending upon available funds as identified in the solicitation,*~~  
32 *and added to, or subtracted from, the base contract, are less than,*  
33 *or equal to, a funding amount publicly disclosed by the trustees*  
34 *before the first bid is opened.*

35 (d) The lowest bid shall be determined in a manner that  
36 prevents any information that would identify any of the bidders or  
37 proposed subcontractors or suppliers from being revealed to the  
38 public entity before the ranking of all bidders from lowest to  
39 highest has been determined.

1 A responsible bidder who submitted the lowest bid as  
2 determined by this section shall be awarded the contract, if it is  
3 awarded. This section does not preclude the trustees from adding  
4 to or deducting from the contract any of the additive or deductive  
5 items after the lowest responsible bidder has been determined.

6 *(e) Nothing in this section shall preclude the prequalification*  
7 *of subcontractors.*

8 SEC. 3. Section 20103.8 of the Public Contract Code is  
9 amended to read:

10 20103.8. A local agency may require a bid for a public works  
11 contract to include prices for items that may be added to, or  
12 deducted from, the scope of work in the contract for which the bid  
13 is being submitted. Whenever additive or deductive items are  
14 included in a bid, the bid solicitation shall specify which one of the  
15 following methods will be used to determine the lowest bid. In the  
16 absence of such a specification, only the method provided by  
17 subdivision (a) will be used:

18 (a) The lowest bid shall be the lowest bid price on the base  
19 contract without consideration of the prices on the additive or  
20 deductive items.

21 (b) The lowest bid shall be the lowest total of the bid prices on  
22 the base contract and those additive or deductive items that were  
23 specifically identified in the bid solicitation as being used for the  
24 purpose of determining the lowest bid price.

25 (c) The lowest bid shall be the lowest total of the bid prices on  
26 the base contract and those additive or deductive items taken in  
27 order from a specifically identified list of those items, ~~depending~~  
28 ~~upon available funds as identified that, when in the solicitation,~~  
29 ~~and added to, or subtracted from, the base contract, are less than,~~  
30 ~~or equal to, a funding amount publicly disclosed by the local~~  
31 ~~agency before the first bid is opened.~~

32 (d) The lowest bid shall be determined in a manner that  
33 prevents any information that would identify any of the bidders or  
34 proposed subcontractors or suppliers from being revealed to the  
35 public entity before the ranking of all bidders from lowest to  
36 highest has been determined.

37 A responsible bidder who submitted the lowest bid as  
38 determined by this section shall be awarded the contract, if it is  
39 awarded. This section does not preclude the local agency from  
40 adding to or deducting from the contract any of the additive or

1 deductive items after the lowest responsible bidder has been  
2 determined.

3 *(e) Nothing in this section shall preclude the prequalification*  
4 *of subcontractors.*

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6 CORRECTIONS

7 **Text — Page 4.**

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